

09/28/2011

HONORABLE LINDA H. MILES

CLERK OF THE COURT  
L. Crawford  
Deputy

BIG EYE CAPITAL INC

DENNIS L HALL

V.

FIREROCK INTERNATIONAL GROUP INC

HEATHER MUIR HENDRIX

## RULING

The Court has reviewed Defendant's Motion to Strike Plaintiff's Motion for Summary Judgment, filed July 8, 2011, and the Response and Reply thereto. The Court also has reviewed Plaintiff's Motion for Summary Judgment, filed June 7, 2011.

In its Motion for Summary Judgment, Plaintiff requests that the Court enter an order requiring Defendant to return eight stock certificates to Plaintiff. In its Response to Defendant's Motion to Strike, however, Plaintiff acknowledges that *prior* to filing the Motion for Summary Judgment, the parties entered into a Settlement Agreement. Plaintiff further acknowledges that pursuant to the Settlement Agreement, Defendant returned the stock certificates to Plaintiff *before* it filed its Motion for Summary Judgment. Although Plaintiff suggests in its Response to the Motion to Strike that its Motion for Summary Judgment seeks damages related to its claim for tortious interference with contractual relations, and while the Motion discusses the tort claim, nowhere in the Motion does Plaintiff request summary judgment on that claim. Rather, Plaintiff's only request in the Motion for Summary Judgment is that the Court order Defendant to return the stock certificates which, by Plaintiff's own admission, it already has in its possession pursuant to the parties' Settlement Agreement.<sup>1</sup> Given these circumstances, Plaintiff

<sup>1</sup> On page 10 of the Motion for Summary Judgment, Plaintiff also states that “[t]he facts supplied in this motion support summary judgment being granted for conversion.” On the same date that Plaintiff filed its Motion for Summary Judgment, it filed a Motion to Amend its Complaint to add a claim of conversion. The Court granted the

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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has unnecessarily wasted this Court's time and the time of defense counsel by filing a frivolous motion.

IT IS ORDERED denying Plaintiff's Motion for Summary Judgment.

In light of the denial of the Motion for Summary Judgment,

IT IS FURTHER ORDERED denying Defendant's Motion to Strike as moot. Although the Motion to Strike is denied, because it brought to the Court's attention the futility of Plaintiff's Motion for Summary Judgment, Plaintiff should be required to pay Defendant's attorney's fees associated with the Motion pursuant to Rule 11, Ariz.R.Civ.P. Defendant shall submit an application (referencing this minute entry) and affidavit of attorney's fees to the Court within 15 days of the filing of this minute entry.

Finally, the Court has received Defendant's Motion for Enlargement of Time in which to Respond to Plaintiff's Motion for Summary Judgment, filed July 11, 2011, and the Response and Reply thereto. In light of the above order denying the Motion for Summary Judgment,

IT IS ORDERED denying Defendant's Motion for Enlargement of Time as moot.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

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Motion to Amend on August 29, 2011, and Plaintiff filed its Amended Complaint with the new claim of conversion on August 30, 2011. Unlike Defendant, the Court does not interpret the Motion for Summary Judgment as moving for summary judgment on the conversion claim—a claim that was not filed until almost two months *after* the filing of the Motion for Summary Judgment.